



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2022-0721, FRL-10452-01-R10]

Air Plan Approval; AK; Adoption and Permitting Rule Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Alaska State Implementation Plan submitted on May 16, 2022, and August 11, 2022. The revisions proposed for approval update Alaska's adoption by reference date for Federal regulations relied upon for implementation of the air program, including permitting requirements and air pollution test methods. The revisions also add procedures for electronic submission of documents for air permits and other authorizations, update air permitting and emission fees, add additional clarifying language to the fee provisions, and specify emissions inventory reporting requirements. The EPA is proposing to approve the submitted revisions as consistent with Clean Air Act requirements.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2022-0721, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider

comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-0256 or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we” and “our” mean “the EPA”.

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I. Background

Each state has a State Implementation Plan (SIP) containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established by the EPA for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP is governed by section 110 of the Clean Air Act, and contains such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The SIP is a living compilation of these elements and is revised and updated by the state to address changing air quality conditions in the state.

Alaska establishes state air pollution regulations in Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50). The state then submits these provisions for EPA approval. The EPA makes the provisions federally enforceable

by approving the provisions into the Alaska SIP in the Code of Federal Regulations (CFR) at 40 CFR part 52, subpart C. Important air pollution control measures in the SIP are the Alaska permitting programs designed to limit emissions from new construction and modification of industrial facilities, called stationary sources under the Federal Clean Air Act. To ensure the permitting programs remain consistent with Federal requirements, the state adopts specific parts of EPA air regulations by reference as of a certain date and regularly submits the adoption updates to the EPA for approval. Alaska also makes periodic changes to state permitting programs to improve implementation and to address changing air quality conditions.

II. Evaluation of Submission

A. Updates to Adoption by Reference

On May 16, 2022, Alaska submitted revisions to the SIP that update the adoption by reference of certain Federal regulations. Alaska's May 16, 2022, submittal also included revisions regarding ice fog and sulfur dioxide special protection areas, which are outside the scope of this action and will be addressed in a separate, future proposed rulemaking.

With respect to the adoption by reference of certain Federal regulations, Alaska updated 18 AAC 50.035(b) which includes the adoption by reference of Federal test procedures and methods for determining compliance with the NAAQS contained in 40 CFR part 50, Appendices A, C, D, F, G, J, K, L, N, P, Q, R, S and T, as well as the recommended test methods for SIPs contained in 40 CFR part 51, Appendix M. Alaska made no substantive changes to 18 AAC 50.035(b) since the EPA's last approval on February 10, 2022 (87 FR 7722) other than updating the adoption by reference date from July 1, 2019 to March 23, 2021. No other revisions to 18 AAC 50.035 were submitted for approval. Therefore, we will continue to exclude 18 AAC 50.035 subsections (a)(6), (a)(9), and (b)(4) which were not submitted for approval, consistent with the current SIP.

Alaska also updated the adoption by reference date for Federal regulations relied upon in 18 AAC 50.040(h) and (i) to implement permitting programs designed to limit emissions from

new and modified stationary sources. In AAC 50.040(h), Alaska adopts by reference specific provisions of 40 CFR 51.166 and 40 CFR part 52 related to the Prevention of Significant Deterioration (PSD) permitting program which regulates the construction or modification of major stationary sources in areas designated by the EPA as having criteria pollutant concentrations meeting the NAAQS, often called attainment or unclassifiable/attainment areas. In AAC 50.040(i), Alaska adopts by reference certain Federal permitting requirements contained in 40 CFR 51.165 related to the construction or modification of major stationary sources in areas that the EPA has designated as having criteria pollutant concentrations above NAAQS, called nonattainment areas.¹ Alaska made no substantive changes to AAC 50.040(h) and (i) since the EPA's February 2022 approval other than updating the adoption by reference date from July 1, 2019, to November 24, 2020. Consistent with the current SIP, Alaska did not submit subsections (a), (b), (c), (d), (e), (g), (j) and (k) for EPA approval.

We have evaluated the submitted adoption updates and propose to approve them because these routine updates are designed keep state requirements current with requirements for SIPs. Additional details on the adoption updates may be found in the submission which is placed in the docket for this action.

B. Fees

By state statute, the Alaska Department of Environmental Conservation (ADEC) is required to evaluate permit administration fees, compliance fees, and air quality emission fees every four years and provide the results in a report. On August 8, 2022, Alaska revised 18 AAC 50.400(d) through (h) to update the fee provisions consistent with the results of ADEC's 2021 Fee Study Report and submitted these changes as an update to the SIP on August 11, 2022. A redline/strikeout comparison of the updates to 18 AAC 50.400(d) through (h) is included in the docket for this action (comparison.docx). In addition to updating the fees, ADEC added

¹ For more information, please see "technical support documents Alaska Part D NSR 165 IBR memo" included in the docket for this action.

clarifying language and added additional language to address certain source categories such as asphalt plants, rock crushers, and portable oil and gas operations.

We have evaluated the submitted fee revisions and propose to approve them because these routine updates are an important component of administering an effective air permitting program. This includes, where applicable, the Clean Air Act section 110(a)(2)(L) requirements related to the construction or modification of major stationary sources. Clean Air Act section 110(a)(2)(L) requires that the owner or operator of a new or modified major stationary source pay the permitting authority the reasonable costs of reviewing and acting upon any application for such permit and the reasonable costs of implementing and enforcing the terms and conditions of the permit.

C. Electronic Permit Application and Reporting Procedures

As discussed in the state's October 20, 2021, public notice included in the docket for this action, ADEC added a new section 18 AAC 50.270 that established requirements and procedures for electronic submission of documents for air permits, reporting, and other authorizations. Specifically, under 18 AAC 50.270(a), if an electronic form is available within ADEC's permittee portal for records or information required by the department, a person shall submit that information electronically using the designated form. Importantly, under 18 AAC 50.270(b), if a person does not have reasonable access to equipment necessary to access the permittee portal, the department may approve submission by alternative methods, including by letter, form, or electronic mail. Under 18 AAC 50.270(c), ADEC established a one-year deadline (September 7, 2023) for submission of existing forms using the permitting portal, and the provisions of 18 AAC 50.270(d) through (g) outline the procedures, timelines, notification, public participation, and electronic test environment for new forms added to the permitting portal. We have reviewed 18 AAC 50.270 and are proposing to approve this new section as consistent with the Clean Air Act. We also note that pursuant to the Cross-Media Electronic Reporting Rule (CROMERR) the EPA already approved Alaska's request to revise its EPA-authorized programs to allow electronic

reporting under 40 CFR parts 51, 52, 60 through 63, and 70 via the Air Online Service System (AOS) for electronic reporting.² The permittee portal is a part of AOS.

D. Emissions Inventory

ADEC also added a new section 18 AAC 50.275 that requires sources to use consistent pollutant-specific emissions factors and calculation methods for all reporting requirements under 18 AAC 50. Specifically, subsection (a) requires all stationary sources operating in the state to report actual emissions, either upon request or to meet individual permit requirements, so that the state can meet Federal reporting requirements under 40 CFR part 51, subpart A. Subsection (b) requires that for the purposes of reporting potential, actual, or assessable emissions under any requirement of 18 AAC 50, stationary sources shall use consistent pollutant-specific emissions factors and calculation methods for all reporting requirements. In its April 18, 2022, response to comments included in the docket for this action, ADEC explained the purpose of the new section was, “for a stationary source that reports emissions under one set of regulatory requirements (e.g. annual emission fees) and again under a second regulatory requirement (e.g. annual compliance certification) that the stationary source will use the same emission factor in both calculations, and not ‘cherry pick’ which emission factor works best for a given situation. The Department is finding multiple reports that often do not align and yet purport to report the same input value (actual emissions), because different emission factors were used trying to achieve some leverage on reported values.” The response to comments further explained that the new section 18 AAC 50.275 will simplify reporting requirements for the regulated community and data validation for ADEC. We have reviewed 18 AAC 50.275 and are proposing to approve this new section as consistent with the Clean Air Act.

III. Proposed Action

The EPA is proposing to approve, and incorporate by reference, certain regulatory revisions to the Alaska SIP submitted on May 16, 2022, and August 11, 2022, as described in

² See 80 FR 48531 (August 13, 2015).

section II of this preamble. We are proposing to determine that these revisions are consistent with Clean Air Act (CAA) section 110, as well as CAA part C and D requirements for the permitting of major stationary sources. Upon final approval, the Alaska SIP will include the following regulations:

- 18 AAC 50.035 Documents, Procedures and Methods Adopted by Reference, except (a)(6), (a)(9), and (b)(4), state effective April 16, 2022, which adopts by reference certain Federal test procedures and methods for determining compliance with the NAAQS;
- 18 AAC 50.040 Federal Standards Adopted by Reference, except (a), (b), (c), (d), (e), (g), (j) and (k), state effective April 16, 2022, which adopts by reference certain Federal regulations for the permitting of new or modified major stationary sources;
- 18 AAC 50.270 Electronic Submission Requirements, state effective September 7, 2022, which establishes requirements and procedures for the electronic submission of permitting forms and other documents;
- 18 AAC 50.275 Consistency of Reporting Methodologies, state effective September 7, 2022, requiring consistent methodology in reporting air emissions;
- 18 AAC 50.400 Permit Administration Fees, except (a), (b), (c), and (i), state effective September 7, 2022, which establishes permit administration fees, compliance fees, and air quality emission fees.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in sections II and III of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rulemaking does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 11, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2023-00817 Filed: 1/17/2023 8:45 am; Publication Date: 1/18/2023]